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CASE COMMENTS

ADVERSE POSSESSION—ACQUISITION OF TITLE TO MINERALS SUBSEQUENT TO SEVERANCE.—*D's* predecessors in title, claimants under a senior patent, conveyed the disputed property excepting and reserving the minerals. *P's* predecessors in title entered into possession of the surface as claimants under a junior patent. *P* seeks a declaratory judgment to cancel the severance deed, contending that by adverse possession of the surface for the statutory period under a color of title in fee he acquired title to both the surface and the minerals. *Held*, that the severance deed was duly accepted and recorded, but that an adverse possessor of the surface under color of title in fee and without actual or constructive notice of the severance acquires title to both the surface and the minerals. Decree of cancellation granted. *Dyer v. United Fuel Gas Co.*, 90 F. Supp. 859 (S.D. W. Va. 1950).

The prevailing rule is that if the ownership of the minerals becomes separated from that of the surface, the subsequent possession of the surface is not regarded as extending to the minerals so as to affect title under the Statute of Limitations. *Kentucky Block*